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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DUANE A. SINGLETON,

Petitioner,

v.

ROBERT L. AYERS, JR., Warden

Respondent.

C 07-5969 VRW (PR)

**ANSWER TO ORDER TO
SHOW CAUSE**

Respondent hereby provides this answer to the order to show cause why the petition for writ of habeas corpus should not be granted:

CUSTODY

Petitioner is lawfully in the custody of the California Department of Corrections and Rehabilitation^{1/} as the result of a conviction in Alameda County Superior Court case number

1. Petitioner is currently incarcerated at San Quentin State Prison in San Quentin, California. Docket No. 9. It is unclear whether petitioner is incarcerated for a probation revocation in the underlying case or a conviction in an unrelated matter. Respondent moves to substitute in the name of the current warden of San Quentin State Prison, Robert L. Ayers, Jr., as respondent. *See* Fed.

1 519203. Petitioner pled no contest to possession of a controlled substance (Cal. Health & Saf. Code,
2 11350(a)) and the trial court granted three years formal probation on June 2, 2006.

4 **GENERAL AND SPECIFIC DENIALS**

5 Respondent denies that petitioner is in custody in violation of the Constitution or laws or
6 treaties of the United States. Respondent specifically denies that petitioner is entitled to federal
7 habeas relief based on an alleged violation of California Penal Code section 825, the deprivation of
8 his constitutional rights prior to his plea, or any alleged errors in the state post conviction review
9 process, or that petitioner received ineffective assistance of counsel.

11 **PROCEDURAL ISSUES**

12 Although petitioner has not exhausted his claims in state court, respondent requests this
13 Court to deny the petition on the merits notwithstanding the failure to exhaust. 28 U.S.C. §
14 2254(b)(2). His petition is timely within the meaning of 28 U.S.C. § 2244 (d).

16 **LODGED DOCUMENTS**

17 Since petitioner did not appeal his conviction, respondent does not have a copy of the state
18 trial court record. A copy of the record is not necessary for a determination of the issues presented
19 by the petition. For ease of reference, respondent has attached pertinent portions of the exhibits to
20 the instant petition as an exhibit to the memorandum of points and authorities, which respondent
21 incorporates by reference in support of this answer.

28 Rules Civ. Proc. 25(d)(1).

Answer to Order to Show Cause

Singleton v. Santa Rita County Jail
C 07-5969 VRW (PR)

CONCLUSION

WHEREFORE, respondent respectfully submits that the petition for writ of habeas corpus should be denied.

Dated: June 9, 2008

Respectfully submitted,

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